

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HITACHI RAIL HONOLULU JV
Employer

and

Case 20-RC-269153

HAWAII TEAMSTERS AND ALLIED
WORKERS, LOCAL 996
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ On November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which sets forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic. In denying review, we find that the Regional Director misapplied factor two of *Aspirus*, which states that a mail-ballot election is appropriate where the "14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher." *Id.*, slip. op. at 5. The Regional Director mistakenly conflated the two contingencies by relying on an upward trend in the positivity rate, even though it never reached 5 percent for the 14-day period at issue, and she compounded that error by focusing only on an increase in confirmed cases for the latter half of that period. Nevertheless, the election has been held and setting it aside would result in waste of resources and delay and would be a disservice to the employees who cast their ballots in good faith. Denying review is also warranted because the 14-day trend in new cases in Honolulu County, Hawaii, where the Employer's facility is located, is increasing as of April 5, 2021, and would thus support a mail-ballot election under *Aspirus* if this election were set aside and a new determination were to be made now. See <https://health.hawaii.gov/coronavirusdisease2019/what-you-should-know/current-situation-in-hawaii/>. Under the foregoing circumstances, we find no reason to overturn the Regional Director's determination.

In denying review, we also note that the Regional Director failed to comply with Board Rules and Regulations Sec. 102.69(e) by issuing the Certification of Representative less than 5 business days after the issuance of the revised tally of ballots. However, the Employer's request for review does not provide any supporting arguments or demonstrate that it was prejudiced by this error, and we therefore find that the error does not warrant granting review.

LAUREN McFERRAN,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
JOHN F. RING,	MEMBER

Dated, Washington, D.C., April 8, 2021.

Chairman McFerran agrees to deny review of the Regional Director's mail-ballot determination for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that setting aside the election at this point would be inefficient and unfair to the unit employees, and that, even under the majority opinion in *Aspirus*, the Regional Director's decision should be affirmed based on the statistics set out above.